

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

15-cr-386 (JGK)

v.

MEMORANDUM OPINION
& ORDER

FRANK JENKINS, JR.,

Defendant.

JOHN G. KOELTL, District Judge:

The defendant, Frank Jenkins, moves for the appointment of counsel to pursue an application pursuant to Section 404 of the First Step Act to reduce his sentence. Because there is no merit to the application under the First Step Act, and no basis to conclude that any such application would have any merit, the application for appointment of counsel is **denied**, and the application for relief under Section 404 of the First Step Act is **denied**.

The defendant pleaded guilty to Count Six of a superseding indictment that charged the defendant with shooting and killing a victim in furtherance of the narcotics conspiracy charged in Count One, in violation of 18 U.S.C. §924(j). The Plea Transcript, ECF No. 243 at 13, 23, the Sentencing Transcript, ECF No. 335 at 17, and the Judgment of Conviction, ECF No. 330, all make it clear that the defendant pleaded guilty and was sentenced for Count Six of the superseding indictment, a


violation of 18 U.S.C. § 924(j). Section 924(j) is not a "covered offense" under Section 404 of the First Step Act that authorizes re-sentencing.

The defendant points to a line of the Plea Agreement with the Government that lists the maximum sentence for a violation of Count One, the underlying narcotics conspiracy. But that reference to Count One was a typographical error, and it should have referred to Count Six. It was plain that the Plea Agreement referred to a plea of guilty to Count Six of the Superseding Indictment, not Count One, and the defendant plainly pleaded guilty to Count Six and was sentenced for a violation of Count Six. Therefore, Section 404 of the First Step Act does not apply.

Accordingly, the defendant's application for the appointment of counsel is **denied**. The defendant's application for a reduction in his sentence pursuant to Section 404 of the First Step Act is also **denied**.

SO ORDERED.

Dated: New York, New York
May 18, 2021



John G. Koeltl
United States District Judge